



U.S. Department of Labor
Wage Hour Division

JAMES F. KESSLER
Compliance Officer

Caryl

103 South Gay Street
Suite 207
Baltimore, MD 21202-4061 (410) 962-4984

A00081

Privileged & Confidential

DOL AUDIT REVIEW
March 21, 2001

DOL
Hap Perry
Jim Kessler 202.693.0508
Carol Stribling 704.334.6307

Mountaire
Dee Ann Landreth
Mike Tirrell
John Wise
Mark Reif

Audit Period
May 1998 – May 2000

Hap Perry said they will not give us anything in writing. We can request audit results through FOIA, but they will deny it.

1. FMLA – OK
2. Child Labor – OK
3. Minimum Wage – DOL claims we are “training” new catchers on the job, but not paying them (2 workers, 3 days each). Catchers. We could find no evidence of this.
4. O.T. – Catchers should be paid O.T. Drivers and forklift not. House-to-house travel is compensable for hours worked. Crew leaders should also be paid OT because they are not salary. We can solve this by making salary.

If crew leaders provide transportation due to MSWDA need:

Drivers License

Physical (and carry w/driver)

Vehicle Inspection

Ins. Req. (\$100,000 per seat)

- MSWPA – disclose conditions of employment at time of offer – posting requirement (in van).
- Pay stub should have name and employer federal I.D.

5. FLSA – 1) PPE if people buy products and that causes their wages to fall below minimum wage, that is a violation.
 - If you charge over the actual cost, if the profit is a violation.
6. Maint. Bonus – needs to be included in straight time pay in order to calculate OT.

Privileged & Confidential

7. FLSA – exempt/non exempt. (DOL considers the following positions non-exempt):
 1. NS. Nurse
 2. Office Mgr – Trans (Pat Beasley)
 3. Trainers (3)
 4. Safety Coordinator
 5. Administrative Assistant (3), Robin P., Rafael V, Karen W.
 6. Benefits Manager – Maria Voss
 7. N.S. H.R. Mgr – Conchita Raga
8. Pre Shift Preparatory Activities
 1. Donning, waiting in line.
 2. Maint. Men – finding out from previous shift what happened during that shift.
9. Breaks
 1. 30 min break – washing, doffing, break time, donning = < 30 min.
10. Post Shift Concluding Activities
 1. Wash, remove PPE
11. Record Keeping
 1. Inaccurate hours worked line employees and catchers.
12. In exchange not to sue us, DOL wants:
 1. Assurance of future compliance (corporate wide).
 2. What specific steps will we take to assure compliance?
 - * If we achieve compliance with 1 & 2, then we will discuss how much back pay.

Back pay discussion (donning, doffing & 30 min ± lunch) = one hour per day,
∴ 5 hours/week.

** Check the 401k eligibility for "live haul contractors" that DOL now says are employees.

Fox vs Tyson case (North Alabama?)

"Hot Goods"

DOL says that Pension Plan Group is looking at this issue (employees- Live Haul)



Mountaire Farms-NC
05/26/00

A00084

US DEPARTMENT OF LABOR AUDIT - May 25, 2000

1. USDOL SUMMARY

2. Payroll, etc., for the period from February 1998 through February 2000 (two years) will be inspected.
3. Provide the names of all catching crew contractors. (Separate meetings were held by USDOL with catching crew contractors.)
4. What is the current number of employees (hourly and salaried) at the facility?

1,284 HOURLY
108 SALARIED

5. How many shifts at the plant?

THREE - TWO PROCESSING ONE SANITATION

How many employee per shift?

- ✓ 1ST SHIFT - 633
- ✓ 2ND SHIFT - 566
- ✓ 3RD SHIFT - 85

6. What is the "turnover rate" for the plant?

1998 - 1.19%

1999 - 1.96%

2000 - 2.71% (ADDITION OF 500+ SECOND SHIFT EMPLOYEES)

7. How many time clocks in the plant?

TWO - LOCATED NEXT TO EACH OTHER

- Which clocks are for punching employee time cards?

Both

- Which clocks are for punching master card for line time?

**EITHER COULD BE UTILIZED ALTHOUGH DEPARTMENT
STOPWATCHES ARE ALSO USED.**

- Where are the clocks located?

IN THE BREAK AREA/SUPPLY ROOM AREA

8. Which employees are paid according to line time?

1st & 2nd PROCESSING EMPLOYEES ONLY

Which employees are not paid according to line time?

**NO OTHER EMPLOYEES ARE PAID ACCORDING TO LINE
TIME.**

**SANITATION EMPLOYEES ARE GUARANTEED 8 HOURS PER
DAY WHETHER THEY WORK THAT NUMBER OR NOT. IF
THEY WORK MORE THAN EIGHT HOURS, THEY ARE PAID
FOR THE ADDITIONAL HOURS.**

9. How are the following employees paid?

- Sanitation

GUARANTEED EIGHT HOURS A DAY EVEN IF THEY WORK LESS; IF THEY WORK MORE THAN EIGHT HOURS, ARE PAID ACCORDINGLY.

- Maintenance

MODIFIED TIME PUNCH/LINE TIME

- QC

PERSONAL TIME PUNCH

- Waste Water

PERSONAL PUNCH TIME

10. How many breaks do the employees receive?

- When are breaks given?

BETWEEN START-UP AND LUNCH BREAK

LUNCH BREAK

AFTER LUNCH, STAGGERED REST ROOM BREAKS

- How long?

✓ FIRST BREAK (10 MINUTES)

✓ LUNCH BREAK (30 MINUTES)

- ✓ **STAGGERED BATHROOM BREAKS IN AFTERNOON NO SET TIME.**

- Are the breaks paid or unpaid?

- **10 MINUTE IS PAID**

- **30 MINUTE LUNCH BREAK IS UNPAID**

- **STAGGERED BATHROOM BREAKS ARE PAID**

11. What garments/equipment are used by employees?

- ✓ **BUMP CAP**
- ✓ **HAIR NET**
- ✓ **SMOCK**
- ✓ **BOOTS**
- ✓ **EAR PLUGS**

SELECTED POSITIONS MAY ALSO INCLUDE ONE OR MORE OF THE FOLLOWING ITEMS OF PROTECTIVE EQUIPMENT:

- ✓ **BEARD NET**
- ✓ **COTTON GLOVES**
- ✓ **RUBBER GLOVES**
- ✓ **CUT RESISTANT GLOVES**
- ✓ **APRON**
- ✓ **ARM GUARDS**
- ✓ **OTHER REPLACEMENT ITEMS SUCH AS COLD WEATHER BOOTS OR INSULATED OVERPANTS OR JACKET**

- Are these garments/equipment required by the company?

YES

- Who pays for these garments/equipment (employees or the company)?

COMPANY PAYS FOR THE INITIAL ISSUE. ADDITIONAL HAIRNETS AND BEARD NETS ARE SUPPLIED TO EMPLOYEES AT COMPANY COST EACH WEEK.

- What is the cost to the company for these garments/equipment?

SEE COST LIST

- How much are employees charged for these items?

BELOW COMPANY COST, SEE COST LIST COMPARISON, THROUGH PAYROLL DEDUCTION

12. Where and when are supplies/equipment distributed to employees?

- Supply room or elsewhere?

HOURS ARE FROM 4:45 AM TO 2:00 AM. SUPPLY ROOM IS ACCESSIBLE 24 HOURS TO SANITATION EMPLOYEES BY KEY ENTRY.

13. Is any housing provided to employees by the company?

NO

- Describe fully.
- Is rent paid by payroll deduction?

14. Is any transportation provided for employees by the company?

NO

- Describe fully
- Is cost of transportation charged to employees (payroll deduction)?
- Describe insurance coverage maintained on such vehicles used for employee transportation.
- Who drives the vehicle, and are they paid for the driving activities?

15. Where/how does the plant recruit new employees?

**AT SELECTED EMPLOYMENT SECURITY OFFICES AND/OR
IN THE HUMAN RESOURCES DEPARTMENT AT THE
PROCESSING PLANT IN LUMBER BRIDGE, NC.
OCCASIONALLY AT LOCAL JOB FAIRS.**

- Local recruitment and/or remote recruitment

LOCAL ONLY

- Radio/ TV/newspaper/others

RADIO - YES, IN FAYETTEVILLE AREA

NO TELEVISION ADS

**NEWSPAPER ADVERTISEMENTS IN FAYETTEVILLE
OBSERVER, RED SPRINGS CITIZEN AND LUMBERTON
ROBESONIAN.**

16. Are any meals provided to employees?

- Describe fully.

**EMPLOYEES ARE PROVIDED A FREE LUNCH FOR ANY
SATURDAY WORKED.**

17. Describe the benefits provided to employees.

SEE BENEFITS INSERT

18. Describe any bonuses paid to employees.

NO BONUSES PAID

- Are these bonuses figured into the "regular rate" when calculating overtime payments?

N/A

19. Who conducts the "orientation" for new employees?

**HUMAN RESOURCES – TRAINING DEPARTMENT &
BENEFITS**

20. How many contract growers are used to raise chickens for this facility?

220

21. How many live haul/catching crews do you have?

SIX

- How many are company employees crews?

NONE

- How many are contract crews?

SIX

- How many employees per crew?

UNKNOWN

22. How is the pay calculated for employees on the catching crew (hourly rate/per thousand)?

UNKNOWN

- Are they paid in cash or by check?
- Are payroll records kept and "withholding" deducted from their pay?
- Are the hours of work recorded? By whom?

23. Does the contract consider the catching crew members to be his "employees" or does the contractor consider the catching crew to be "independent contractors"?

UNKNOWN

24. What day is payday for company employees?

FRIDAY – EXCEPT DAY BEFORE IF IT IS HOLIDAY

THURSDAY EVENING – FOR 2ND SHIFT EMPLOYEES, SO THEY HAVE THE OPPORTUNITY TO CASH CHECKS ON FRIDAY.

25. How often do you pay contractor for catching chickens (weekly/monthly/etc)?

WEEKLY

- What day of the week does the company pay the contractors?

THURSDAY

- What day of the week does the contractor pay his catching crewmembers?

UNKNOWN

26. (A) How much does the company pay the contractor for catching chickens?
(B) How much does the contractor pay the catching crew members for catching chickens?

UNKNOWN

27. Who determines the rate paid for harvesting the chicken?

**THE COMPANY AFTER NEGOTIATION WITH THE
CONTRACT CREWS**

- When was the last increase? **APPROXIMATELY 1 1/2 YEARS AGO**
- Was the rate negotiated with the contractor? **YES**
- How was the rate determined and by whom? **MUTUAL AGREEMENT
BETWEEN COMPANY AND CONTRACTOR**

28. What equipment/supplies (if any) does the company provide to contract chicken catching crew? (I.e. trucks, cages, forklift, screens, fans etc.)

**COMPANY OWNED TRUCKS AND COMPANY DRIVERS,
COMPANY FORKLIFT AND FORKLIFT DRIVERS, AND
COMPANY FIRE FANS. THE COMPANY DOES NOT SUPPLY
ANY SCREENS, PENS, OR ANY OTHER SUPPLIES.**

- Is the contractor charged for these items?

N/A

29. Are any company employee (such as live haul managers etc.) present on the farm when the catching crews are harvesting chickens?

AT VARIOUS TIMES.

- Who/when/under what circumstances?

**LIVE HAUL MANAGEMENT MAY BE PRESENT ON THE
FARMS AT VARIOUS TIMES TO CHECK WITH ROWERS,**

**CHECK ON SCHEDULES, FORK LIFT DRIVERS, EQUIPMENT
STATUS AND CONDITIONS IN THE LOAD OUT AREA.**

30. Are there any family members on the catching crews?

UNKNOWN

- Related to contractor?
- Related to each other?

31. Do all members of the contract catching crew reside locally and have a permanent address?

UNKNOWN

32. Does the catching crew contractor also perform catching services for any other poultry companies?

UNKNOWN

33. Do you (the processor) utilize the services of more than one contract catching crew?

YES.

34. What types of deductions are made from the pay checks of employees?

- Describe fully.
- Are employees notified in advance that these deductions will be made?

YES

- Do employees authorize deductions in writing?

**YES, EXCEPT FOR COURT MANDATED GARNISHMENTS
OR CHILD SUPPORT PAYMENTS.**

35. What is the minimum rate paid to plant employees? Starting rate?

\$6.50 - FIRST SHIFT

\$6.75 - SECOND SHIFT

36. How many immigrant/Hispanic employees in the plant?

**834 SPANISH SPEAKING EMPLOYEES
APPROXIMATELY 60 - 65%**

**40% AFRICAN AMERICAN, AMERICAN INDIAN, EAST
INDIAN, CAUCASIAN**

- Are there any H2-B employees? If so, describe fully.

NO

37. What equipment must employee put on prior to working

**BOOTS, HAIRNET, HARDHAT, EARPLUGS, AND SAFETY
GLASSES (IF NOT WEARING PRESCRIPTION GLASSES).**

- Donning/doffing time – how long?

20 TO 35 SECONDS ON AVERAGE FOR DONNING ALL EQUIPMENT

- Where do employee change clothes and/or don equipment?

MOST EMPLOYEES CHANGE IN LOCKER ROOM AREA.

- Are employees paid for donning/doffing time?

NO

38. Who is the youngest employee in the plant?

NAME - SAHRILEE GOMEZ; NIGHT SHIFT THIGH DEBONE DEPARTMENT

- Does the company have any minimum age restriction for hiring?

YES - MUST BE 18 YEARS OF AGE.

39. Who at the facility drives company vehicles? (truck driver, etc.)

- Describe fully.

✓ LIVE HAUL DRIVERS, FEED HAUL DRIVERS, DRESS HAUL DRIVERS

- How paid?
 - ✓ **Live HAUL - BY LOAD AND MILE**
 - ✓ **DRESS HAUL - BY LOAD AND MILE**
 - ✓ **JOCKEY DRIVERS - HOURLY WAGE**
- Interstate travel? (motor carrier exception)
 - ✓ **LIVE HAUL - YES**
 - ✓ **DRESS HAUL - YES**
 - ✓ **FEED HAUL DRIVERS - YES**